

14 FAH-2 H-500 POST-AWARD CONTRACT ADMINISTRATION

14 FAH-2 H-510 GENERAL

(CT:COR-23; 08-06-2014)
(Office of Origin: A/OPE)

14 FAH-2 H-511 ADMINISTRATION

(CT:COR-23; 08-06-2014)

- a. To assure performance of a contract *so that* the U.S. Government *receives the value paid for, contracting officer's representatives (COR) monitor* the contractor's performance and take prompt, action to correct problems. This is one of the most vital elements of what is called contract administration.
- b. The goal of contract administration is to ensure that the contract is performed, as written, by both the contractor and the U.S. Government. Here the emphasis is on "as written." U.S. Government personnel dealing with a contractor must understand that when the U.S. Government acts as a party to a contract, its authority to direct the actions of a contractor rest *primarily* in the written words of the contract.
- c. Contract administration begins when the contract has been signed and ends with the administrative actions taken at contract closeout, after performance has been completed and the contractor has received final payment. Contract administration includes monitoring the contractor's technical progress; approving invoices for payment in accordance with contractual terms; reviewing and consenting to subcontracts *when required*; monitoring subcontractor performance *as appropriate*; controlling U.S. Government property; and *monitoring* contract modifications and terminations.
- d. Ultimately, the administration of a contract is the responsibility of the contracting officer who is the only person who may modify the contract or take action to enter into or change a contractual commitment on behalf of the U.S. Government. However, the contracting officer's representative (COR) plays *a crucial* role in contract administration as described below.

14 FAH-2 H-512 CONTRACT INTERPRETATION

(CT:COR-23; 08-06-2014)

- a. The prime reference for performance is the plain language of the contract. U.S. Government regulations and procedures provide direction and guidance, but they do not alter the written contract terms.
- b. Contracts must list the applicable contract clauses. The contracting officer's representative (COR) *must be familiar with* these clauses. Refer questions regarding contract language to the contracting officer. *CORs should in particular understand the statement of work, specifications, invoicing and payment provisions, government property responsibilities (if assigned) and inspection and acceptance terms.*
- c. Once the contract has been awarded, the COR's first responsibility is to read and understand the contract. U.S. Government contracts are subject to the same common law rules of interpretation applied to other contracts. Some of these rules are:
 - (1) The intent of the parties must be gathered from the whole contract;
 - (2) The standard for the interpretation of the written contract is the meaning that would be attached to the writing by a knowledgeable, objective third party;
 - (3) Specific provisions prevail over general provisions when in conflict;
 - (4) A standard clause entitled "Order of Precedence" resolves inconsistencies within the contract provisions by assigning precedence in a specified order within the contract parts;
 - (5) An ambiguous provision subject to more than one interpretation will be interpreted against the party responsible for creating it (in U.S. Government contracts, this is almost always the U.S. Government, as the contract provisions are normally prepared by the U.S. Government); and
 - (6) Everyday words are given their dictionary definitions.

14 FAH-2 H-513 THE CONTRACTING OFFICER'S REPRESENTATIVE'S (COR) ROLE IN CONTRACT ADMINISTRATION

(CT:COR-23; 08-06-2014)

- a. The legal responsibility for administration of the contract remains with the contracting officer. The contracting officer's representative (COR) functions as the technical representative of the contracting officer and stays in close communication with the contracting officer (CO), relaying any information affecting contractual commitments and requirements.

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- b. Generally, the contracting officer authorizes the COR to perform the following functions independently:
- (1) Correspond directly with the contractor (the contracting officer receives copies of all correspondence);
 - (2) Conduct on-site visits;
 - (3) Hold conferences with the contractor;
 - (4) Approve all technical data submitted by the contractor;
 - (5) Provide direction to the contractor in technical matters as long as the direction is:
 - (a) Within the scope of the contract as written; and
 - (b) Will not affect cost, period of performance; or
 - (c) Other terms and conditions of the contract;
 - (6) Approve invoices for payment.
- c. In addition to exercising delegated authorities, the COR is expected to:
- (1) Advise and assist the contracting officer in administering the business aspects of the contract by reviewing vouchers, invoices, reports, and deliverables;
 - (2) Maintain a file documenting significant actions and containing copies of trip reports, correspondence, reports and deliverables received under the contract;
 - (3) Coordinate requirements office decisions relating to the contract; and
 - (4) Prepare final summary statements for contract closeout.
- d. Contract administration responsibilities of the contracting officer's representative (COR) and the contracting officer (CO) are charted in 14 FAH-2 Exhibit H-513.

14 FAH-2 H-514 LIMITATIONS ON CONTRACTING OFFICER'S REPRESENTATIVE'S (COR) AUTHORITY

(CT:COR-23; 08-06-2014)

The contracting officer's representative (COR) *must* not direct the contractor to undertake any activity which will change the:

- (1) Total price or estimated cost;
- (2) Product deliverables;
- (3) Work requirements;

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- (4) Delivery dates;
- (5) Total period of performance; and
- (6) Administrative provisions of the contract.

14 FAH-2 H-515 SUPERVISOR'S PARTICIPATION IN CONTRACT ADMINISTRATION

(CT:COR-23; 08-06-2014)

- a. Being designated as a contracting officer's representative (COR) places unique demands on an individual and establishes a direct channel of communication between the contracting officer and the COR. The supervisor of an individual who has been appointed as a COR has a responsibility to provide guidance to that individual; however, such guidance should not conflict with the contracting officer's letter of designation to the COR. The supervisor should ensure that the COR has the personal support, resources, and time needed to perform his or her functions. The contracting officer (CO) and the supervisor should also ensure the COR has had the appropriate training as described in 14 FAH-2 H-143.1.*
- b. Supervisors of individuals being designated as CORs generally are responsible for preparing the memorandum nominating the individual as a COR. Supervisors must also approve an application by a potential COR to become FAC-COR certified. (Reference Federal Acquisition Certification for Contracting Office's Representative).*
- c. Evaluation of COR performance where that performance constitutes a minimum of 25 percent of the individual's work responsibilities requires coordination between the contracting officer and the supervisor. Supervisors must ensure that the COR has appropriate work commitments reflecting the specific COR responsibilities. Supervisors must request input from the contracting officer via email or memo on COR performance of contract administration duties. Supervisors of detailees, when actually employed (WAE) staff, temporary hire 3161 employees, and personal services contractors (PSCs) serving as CORs must also document the adequacy of performance of COR duties to include input from the contracting officer.*
- d. Supervisors will ensure the COR is maintaining contract files properly. The supervisor will verify the status of COR contract files during any transition of CORs or contracting officers.*

14 FAH-2 H-516 POST-AWARD ORIENTATION AND CONFERENCES

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(CT:COR-23; 08-06-2014)

- a. Post-award orientation is useful for ensuring that the contractor understands contract requirements and for delineating the roles of U.S. Government personnel and the procedures that will be followed in administering the contract. Orientation brings together key individuals (both U.S. Government and contractor) who participated in the pre-award phase with those responsible for the post-award administration of the contract. It also affords an opportunity for the orderly transition of contractual duties and obligations if different personnel are to assume post-award responsibility.
- b. In relatively simple acquisitions, post-award orientation may be accomplished by a letter from the contracting officer that identifies the U.S. Government's contract administration officials and any special or unusual requirements.
- c. The contracting officer may decide that a post-award conference is needed if there are indications that the contractor lacks a clear understanding of the contract requirements, or if the contract work is complex. If a conference is held, the contracting officer will chair the conference. The post-award conference should be preceded by a meeting of U.S. Government management personnel in order to formulate an agenda. Agenda topics might include:
 - (1) Clarification of the specifications or the contents of the Performance Work Statement and/or identification of ambiguous clauses;
 - (2) Clarification of special contract terms/clauses;
 - (3) Reporting requirements and procedures for monitoring and measuring progress;
 - (4) Billing, voucher approval, and payment procedures;
 - (5) Quality control and testing requirements;
 - (6) Discussion of lines of authority, i.e., COR responsibilities versus contracting officer responsibilities;
 - (7) Furnishing and control of U.S. Government property, if applicable;
 - (8) Government support such as office space or life support at posts; and*
 - (9) Anticipated problem areas.*
- d. Performance in countries with high potential for trafficking in persons (TIP) violations warrant a post award conference to ensure contractors understand the requirements of TIPs prevention. For more information on combating trafficking in persons, see *clause* 48 CFR 52.222.50, *Combating Trafficking in Persons*. Topics to be discussed should include:
 - (1) Importance of preventing TIPs: This is an issue that the U.S. Government feels strongly about. Sanctions for violations, including termination for default *and dismissal of employees*, are harsh;
 - (2) Zero tolerance policy: The U.S. Government has a zero tolerance policy.

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Every instance of trafficking is important and no instance will be minimized.

Every violation must be reviewed and addressed;

- (3) Brief employees: Anyone associated with the performance of the contract must be briefed on *preventing* trafficking in persons. This briefing should include the nature of trafficking, where it takes place, how to recognize it, and the importance of avoiding situations such as commercial sex that provide financial incentives for engaging in TIPs;
- (4) *Commercial sex:* Contractors and *their* employees *may* not utilize commercial sex establishments during the performance of the contract *regardless of the legal status of prostitution in the country of performance;*
- (5) Contractor *provided housing:* *Contractors* will be held accountable for an adequate housing plan. Contractors who provide worker accommodations must ensure these accommodations meet local host-nation labor and health laws and are clean and adequate. Contractors should submit a housing plan with their proposals *if housing will be provided. Contractors must update the plan during performance if it changes;*
- (6) *Do not* withhold passports or visas: Contractors may not withhold employee passports or visas without employee permission because this may have the effect of preventing the free movement of employees who no longer want to work for the contractor. It has the appearance of bonded labor, which is prohibited;
- (7) Plan for understanding local labor laws: Contractors need to understand the local labor laws. The contractor should be able to articulate a plan for how to keep abreast of changes in the laws;
- (8) *Written employment agreement: Contractors who recruit third country workers for the contract must provide a written employment contract describing the work, working conditions, pay and clear explanations for salary deductions.* Employees must understand why wages are being withheld; otherwise the situation may resemble bonded labor with employees owing more than they make and only working to pay off debts;
- (9) *No recruitment fees charged to recruited employees: Contractors may not charge recruited employees, either through the company, or through a recruiter, any recruitment fees;*
- (10) Briefing subcontractors: The TIP requirements also apply to subcontractors. Prime contractors must have a method of briefing subcontractors on TIP requirements; and
- (11) Independent TIP compliance audit on contracts over \$150,000 in Tier 2 Watch List and Tier 3 countries: Contractors must hire an independent audit firm to verify TIP compliance if the contract exceeds these thresholds unless the COR and the contracting officer determine other reviews are adequate (see Tier Placement).

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- e. In conducting the conference, the contracting officer must make clear to the contractor that the purpose of the conference is to explain or clarify contract requirements, not make any changes in the contract. If a change is necessary, the extent of the change must be clearly established. Only the contracting officer is authorized to make any contractual commitments.

14 FAH-2 H-517 STANDARD CONTRACTING OFFICER'S REPRESENTATIVE (COR) WORKING FILE

(CT:COR-23; 08-06-2014)

- a. The COR must set up and maintain a file for each contract under his or her administration. The file's purpose is twofold: To provide easy access to technical contract information and work progress and to ease the transition to a new COR, if one is appointed during the life of a contract. Each file must be clearly indexed and must contain copies of the following materials:
 - (1) *Copy of the CO's letter of designation and other documents describing the COR's duties and responsibilities plus a copy of any contract administration functions delegated to a contract administration office that might not be delegated to the COR. (Reference 48 CFR 1.604);*
 - (2) Complete Procurement Request Package;
 - (3) Solicitation and any amendments to it;
 - (4) Technical and cost proposals (with modifications) submitted by the winning contractor;
 - (5) Copy of the contractor's approved work plan, if required;
 - (6) Copy of the contract and all modifications to it;
 - (7) Copies of all progress reports submitted by the contractor;
 - (8) Copies of all correspondence and synopses of telephone calls to and from the contractor;
 - (9) Interim and final technical reports or other products;
 - (10) Documentation of acceptability/unacceptability of deliverables (see 14 FAH-2 Exhibit H-517 for a sample delivery log);
 - (11) Documentation of on-site visit results;
 - (12) Copies of any memoranda regarding periodic performance affecting payment;
 - (13) Copies of all invoices/vouchers and a payment register indicating the balance of funds remaining;
 - (14) COR's final assessment of contract performance; and

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(15) Any other pertinent materials or information.

- b. The COR must provide to the contracting officer copies of all material which he or she authors. The requirements office must develop a procedure for the retention or retirement of technical files and products, including the COR file.
- c. The COR must certify to the contracting officer that the COR contract files are being maintained properly.*
- d. During any transition of CORs or contracting officer the status of the COR contract files will be verified.*

14 FAH-2 H-518 AND H-519 UNASSIGNED

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14 FAH-2 Exhibit H-513

**Contract Administration Responsibilities of the
Contracting Officer's Representative (COR) and
the Contracting Officer (CO)**

(CT:COR-23; 08-06-2014)

Stage	COR	CO
Preparing for contract administration	Read contract Set up COR file Assist CO in post-award orientation conference, if held	Review contract Hold post-award orientation conference, if necessary
Administering the contract	Assure that contractor does the work called for Assure quality Assure timely performance Assure performance within budget (cost-type contracts) Assure performance along most beneficial lines of effort Approve payment for satisfactory performance Document and keep CO apprised of unsatisfactory performance Act as liaison with contractor and CO <i>Maintain COR contract files</i>	Issue contract modifications Settle disputes, as necessary Terminate contract, if necessary Consent to placement of subcontracts Resolve issues of unsatisfactory performance
Closing out the contract	Make final determination of technical acceptability Recommend disposition of U.S. Government-furnished property <i>Reconcile funding against contractor billings and payments and recommend de-obligation of funds as necessary.</i> Recommend final settlement, if necessary	Request final audit, if necessary De-obligate excess funds Dispose of U.S. Government-furnished property Negotiate final settlement (CR contracts) Approve final payment <i>Ensure contract files maintained and Retire file properly</i>

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14 FAH-2 Exhibit H-517 Sample Delivery Log

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Contract No.: _____

Deliverable Number	Date Due	Date Received	<i>Accept-able</i> (Yes/No)	Contractor Notified	Contracting Officer's Representative (COR) Notified